



STATE OF NEBRASKA  
**Office of the Attorney General**

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**JON BRUNING**  
ATTORNEY GENERAL

**LESLIE S. DONLEY**  
ASSISTANT ATTORNEY GENERAL

October 21, 2013

William H. Foster III  
Better Airports, LLC  
4504 North Versailles Avenue  
Dallas, TX 75205

RE: *File No. 13-R-127; Wahoo Airport Authority; William H. Foster III,  
Petitioner*

Dear Mr. Foster:

We are writing in response to your e-mail sent to the Attorney General/Department of Justice website on October 4, 2013, in which you requested our assistance in obtaining certain public records belonging to the City of Wahoo Airport Authority (the "Airport Authority"). As is our normal practice with such requests, we contacted the party against whom the complaint was made and requested a response. In this case, we directed your e-mail to Airport Manager Melissa Harrell. On October 15, 2013, we received Ms. Harrell's response on behalf of the Airport Authority. We considered your e-mail to be a petition for access to records under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2008, Cum. Supp. 2012). Our findings and future action in this matter are set forth below.

### RELEVANT FACTS

Our understanding of the facts in this case is based on your e-mail and Ms. Harrell's response.

On June 26, 2013, you e-mailed Ms. Harrell and specifically requested "Copies of Current 2013 Fully Executed Leases for the Wahoo Airport AG Hangar and the Wahoo Airport Corporate Hangar." On June 28, 2013, Ms. Harrell sent you the Wahoo Airport AG Hangar lease, but did not send the Wahoo Airport Corporate Hangar lease. Later that day, you and Ms. Harrell agreed that she would send you the requested lease on

July 8, 2013, upon her return to the office from vacation. You did not receive the lease as promised. Consequently, you sent follow-up e-mails to Ms. Harrell on July 9, July 10, September 25, and October 3, to which you received no response. You subsequently filed your petition with this office on October 4, 2013.

According to Ms. Harrell:

The specific lease agreement that Mr. Foster requested was not part of our public records at the time of his requests. I have, since receiving your request, been able to secure the requested lease agreement from the tenant and it is enclosed.<sup>1</sup>

Ms. Harrell indicates that you have made numerous public record requests with the Airport Authority over the past year, which she completed in a timely manner. She states that her failure to obtain this particular lease was not handled as professionally as it could have been. She further states that she did not deliberately deny you access to the records, she just did not have the records to give to you. She represents to us that in the future, she will work to fill all "requests within the boundaries of the law."

## DISCUSSION

Generally speaking, the Nebraska Public Records Statutes allow interested persons in Nebraska the right to examine public records in the possession of public agencies during normal agency business hours, to make memoranda and abstracts from those public records, and to obtain copies of public records in certain circumstances. A public body is not required, however, to create documents that do not otherwise exist, or to answer questions made to the public body under the guise of a public records request.

When we receive petitions under Neb. Rev. Stat. § 84-712.03, our focus is to ensure that citizens have not been improperly denied public records. Since the Airport Authority has now provided the record which is responsive to your public records request, we see no basis for further action by this office and we are closing this file. However, we will strongly suggest to Ms. Harrell, by sending her a copy of this letter that, in the future, a *timely response* must follow any request for public records, i.e., not

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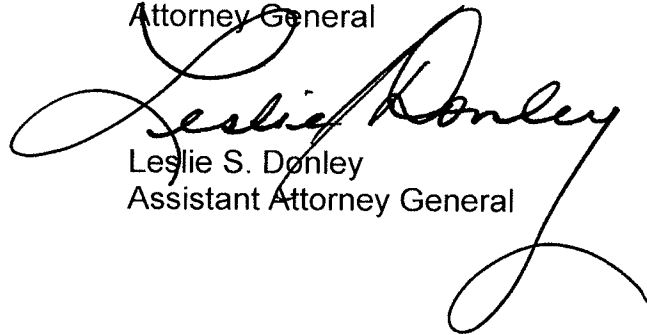
<sup>1</sup> A copy of the "Wahoo Airport Authority Annual Corporate Hangar Lease – 2013" is attached to this letter.

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more than four business days after actual receipt of the request. Further, the Airport Authority's response must fully comport with the requirements set out in Neb. Rev. Stat. § 84-712(4). And, in the event access to particular records is denied, that the Airport Authority include all of the components set out in Neb. Rev. Stat. § 84-712.04 in its denial letter.

Sincerely,

JON BRUNING  
Attorney General

A handwritten signature in black ink, appearing to read "Leslie S. Donley". The signature is written in a cursive, flowing style with large loops and a long tail that extends downwards and to the right.

Leslie S. Donley  
Assistant Attorney General

Attachment

cc: Melissa Harrell (w/o att.)

49-1039-30

## WAHOO AIRPORT AUTHORITY ANNUAL CORPORATE HANGAR LEASE - 2013

For and in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

Lessee information, plane information, and rates are included in "Attachment A" to this lease.

1. The Lessee rents from the Airport Authority of the City of Wahoo (Authority) the Corporate Hangar located on the Wahoo Municipal Airport herein referred to as the "Airport".
2. Lessee shall have and hold said premises for the term beginning January 1, 2013 and ending December 31, 2013 unless sooner terminated as hereinafter provided. The Airport Authority reserves the right to relocate Lessee to another hangar upon 60 days written notification.
3. Lessee had paid the sum as described in Attachment A of this lease for the rental for the term of one year as specified above (due January 31, 2013), or the sum as described in Attachment A of this lease for the rental on a semi-annual basis (due January 31, 2013 and July 31, 2013), or the sum as described in Attachment A of this lease for the rental on a monthly basis (due the 1<sup>st</sup> of each month).
4. Lessee agrees to use the premises for storage of aircraft owned or leased by Lessee. Lessee shall not engage in any commercial activities within the Corporate Hangar of any kind without prior written permission of the Authority.
5. Lessee agrees to obey the ordinances of the City of Wahoo and Rules and Regulations of the Airport Authority of the Wahoo Municipal Airport pertaining to Lessee's use of the Airport, including but not limited to the following Bulk Hangar rules and procedures:
  - A. The hangar electrical system is designed for light duty service only. Only the following electrical appliances will be allowed in addition to the basic lighting fixture, winch, aircraft heater(s), trouble lights and portable tools as necessary. All such appliances shall be properly grounded. No electrical motor or appliances shall be located within 18 inches of the hangar floor or wall.
  - B. Aircraft shall not be fueled or refueled while any portion of the aircraft is within the hangar.
  - C. Aircraft batteries shall not be charged while any portion of the aircraft is within the hangar.
  - D. Area heaters, regardless of type, are not permitted in the hangar. Open flame operations of any kind are strictly prohibited. No smoking is permitted in the Corporate Hangar.
  - E. Hangar floor is to be kept free of debris and flammable materials. Storage of fuels in containers other than stored aircraft within the Corporate Hangar area is prohibited. Lessee may store aircraft lubricants within the Corporate Hangar only in properly marked UL or OSHA approved containers.
  - F. Lessee shall maintain a CO2 or A-B-C type fire extinguisher in the hangar. Annual inspection of this extinguisher is required by State and City policy.
  - G. The Authority will issue a key to the Corporate Hangar, however the Authority reserves the right to inspect said Corporate Hangar at any reasonable time. The use of a lock other than the lock issued by the Authority on the hangar door is prohibited. The Authority reserves the right to remove private locks at its discretion.
  - H. Lessee may use Corporate Hangar taxiway and ramp for vehicular access to the hangar. The maximum speed limit in the Corporate Hangar area is 15 MPH and aircraft have the right-of-way at all times. Parking or driving

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on any turf areas is strictly prohibited. Vehicles may be parked in Corporate Hangar in conjunction with aircraft use.

I. Should maintenance or other service be required, contact the Airport Authority or FBO.

J. Lessee shall be held responsible for any individual(s) or guests that gain access to the Hangars and Taxiways.

K. Lessee shall comply with Airport Authority minimum standards for dispensing of fuel.

L. Modification of any hangar space is prohibited without prior written permission of the Authority.

6. Lessee acknowledges and understands that the Corporate Hangar space leased herein is located within the Wahoo Municipal Airport secured area. Lessee agrees to comply with all Federal Aviation Administration and Airport Authority security regulations. The hangar in which these premises are leased may be subject to a Revolving Hangar Program Agreement with the Nebraska Dept. of Aeronautics. This lease is generally subject to that agreement and should it become necessary, for any reason, for the Dept. of Aeronautics to take possession of the hangar, this lease is subject to immediate cancellation.

7. Lessee understands and agrees that access to the Corporate Hangar and ramp area may be obtained only through the use of authorized access media. Vehicles and persons may gain access to the Corporate Hangar area only at assigned access points. All of Lessee's employees, agents, members who will be unescorted in this area, shall be instructed on authorized access. Lessee shall "escort" any guest, invitees or other persons accompanying Lessee. Lessee is responsible for all such persons, escorted or not.

8. Lessee will not paint or allow painting to take place within the leased premises without first receiving approval from the Airport Authority and then causing the area inside to be protected.

9. Lessor, its successor and assigns, for the use and benefit of the public, a free and unrestricted right of flight for the passage of aircraft in the airspace above the surface of the premises herein conveyed, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from, or operating on or about the Airport.

10. Authority shall maintain the Corporate Hangar at its expense, except any and all damages caused by Lessee and its agents, guests or by the negligence of Lessee, its employees, agents and members shall be paid by Lessee. Authority reserves the right to make periodic inspections of the Corporate Hangar for the purpose of preventative maintenance and to inspect for compliance with the lease terms. Lessee shall be responsible for snow or ice removal in the area of the Corporate Hangar and immediately outside the hangar door, which is not serviced by the Airport Authority. Airport Authority will not perform detailed ice or snow removal.

11. Authority shall insure all improvements owned by the Authority on the premises. Lessee shall bear the entire risk of damage or destruction of aircraft and other personal property stored in the hangar. Lessee on behalf of itself and its insurer waives any right of subrogation to Authority, arising out of damage or destruction of the aircraft or personal property while in the leased premises. Lessee further, by the signing of this lease, and in consideration of the like mutual release, releases the Authority from liability for damage or destruction of its stored aircraft or personal property from any perils common to such aircraft or personal property, unless said damage or destruction is due to the sole negligence of the Authority.

12. Authority may terminate all of the rights of Lessee hereunder by giving thirty (30) days written notice of termination to Lessee upon Lessee's failure or refusal to pay rent as per the terms of this Lease or upon Lessee's breach of the covenants and terms of this Lease. Upon said breach and after the said thirty days notice, Authority may enter the

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leased premises and remove all of Lessee's property. Upon termination of said lease, a refund may be issued by the Authority for any rents prepaid on said hangar space.

13. Lessee agrees to indemnify and save harmless the Wahoo Airport Authority, the City of Wahoo, their Board members, agents, officers or employees from and against all liability for injuries to persons or damage to property occasioned by the operation of the Lessee.

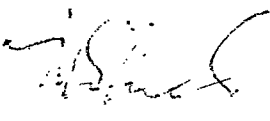
14. Lessee shall not assign or sublet the premises in whole or in part without the permission of the Airport Authority or Airport Authority.

IN WITNESS WHEREAS, the parties hereto have hereunto affixed their hands this day of 9<sup>th</sup> October 2013

WAHOO AIRPORT AUTHORITY

  
\_\_\_\_\_  
Chairperson or Ex-Officio

LESSEE

  
\_\_\_\_\_  
President  
Lessee